

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

WILLIAM LEONARD, JR.,	)	
	)	
Plaintiff,	)	
	)	Case No. 3:05-CV-01015-MEF-CSC
vs.	)	
	)	
RELIASTAR LIFE INSURANCE	)	
COMPANY f/k/a NORTHWESTERN	)	
NATIONAL LIFE INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	
	)	

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**DEFENDANT RELIASTAR LIFE INSURANCE COMPANY’S RESPONSE  
IN OPPOSITION TO PLAINTIFF’S ALTERNATIVE MOTION TO STAY**

Defendant ReliaStar Life Insurance Company (“ReliaStar”) hereby separately responds to the Motion to Stay which was contained within the Plaintiff’s Response in Opposition to ReliaStar’s Motion to Dismiss the Complaint (D.E. 11) (“Plaintiff’s Opposition”). For the reasons set forth below, the Motion to Stay should be denied as moot.

In response to ReliaStar’s Motion to Dismiss the Complaint (D.E. 4), Plaintiff’s Opposition requested, in the alternative, that the Court stay any action on the Motion to Dismiss and allow Plaintiff to conduct discovery.<sup>1</sup> This alternative Motion to Stay was given a separate docket entry. As discussed in ReliaStar’s Reply to Plaintiff’s Opposition (D.E. 14), the Plaintiff filed a First Amended Complaint (D.E. 9) which superseded the

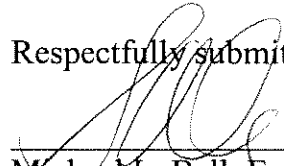
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<sup>1</sup> See D.E. 11, at 3 (in the alternative, “Plaintiff moves the Court to stay any ruling on the Defendant’s motion and allow Plaintiff the opportunity to conduct discovery.”).

original Complaint<sup>2</sup> and rendered ReliaStar's Motion to Dismiss moot.<sup>3</sup> Accordingly, Plaintiff's Opposition to the Motion to Dismiss, and Plaintiff's alternative Motion to Stay are also moot.

WHEREFORE, ReliaStar respectfully requests that the Court enter an Order denying Plaintiff's alternative Motion to Stay as moot.

Respectfully submitted,



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<sup>2</sup> See, e.g., *Kolling v. American Power Conversion Corp.*, 347 F.3d 11, 16 (1st Cir. 2003) (amended complaint completely supersedes original complaint, "and thus the original complaint no longer performs any function in the case") (citing *Lopez-Carrasquillo v. Rubianes*, 230 F.3d 409, 412 (1st Cir. 2000); 6 C. WRIGHT, A. MILLER & M. KANE, FEDERAL PRACTICE & PROCEDURE § 1476 (2d ed. 1990) ("Once an amended pleading is interposed, the original pleading no longer performs any function in the case.")).

<sup>3</sup> See, e.g., *DePaola v. Nissan North Am.*, No. Civ.A. 1:04CV267-W, 2005 WL 2122265, at \*11 (M.D. Ala. Aug. 29, 2005) (motions to dismiss filed prior to an amended complaint are moot).

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of February, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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